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HOUSE BILL 657

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

William "Bill" R. Rehm

AN ACT

RELATING TO CRIMINAL FINES, FEES AND COSTS; REQUIRING COMMUNITY SERVICE IF A DEFENDANT IS UNABLE TO PAY PROBATION OR PAROLE COSTS OR OTHER FINES OR FEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 31-12-3 NMSA 1978 (being Laws 1971, Chapter 236, Section 1, as amended) is amended to read:

"31-12-3. PAYING FINES, FEES OR COSTS IN INSTALLMENTS--
COMMUNITY SERVICE OPTION.--

A. ~~[Any]~~ A person sentenced to pay a fine or to pay fees and costs in any criminal proceeding ~~[against him]~~, either in addition to or without a term of imprisonment, may in the discretion of the court be allowed to pay such fine, fees or costs in installments of such amounts, at such times and upon such conditions as the court may fix. The defendant may also

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1 be required to serve a period of time in labor to be known as
2 "community service" in lieu of all or part of the fine. If
3 unable to pay the fees or costs, ~~[he may be granted permission]~~
4 the defendant shall be required to perform community service
5 ~~[in lieu of them as well]~~. The labor shall be meaningful,
6 shall not be suspended or deferred and shall be of a type that
7 benefits the public at large or any public, charitable or
8 educational entity or institution and is consistent with
9 Article 9, Section 14 of the constitution of New Mexico. Any
10 person performing community service pursuant to court order
11 shall be immune from civil liability arising out of the
12 community service other than for gross negligence, shall not be
13 entitled to wages or considered an employee for any purpose and
14 shall not be entitled to workers' compensation, unemployment or
15 any other benefits otherwise provided by law. Instead, a
16 person who performs community service shall receive credit
17 toward the fine, fees or costs at the rate of the prevailing
18 federal hourly minimum wage. Unless otherwise provided,
19 however, the total fine, fees and costs shall be payable
20 forthwith.

21 B. The court may at any time revise, modify, reduce
22 or enlarge the amount of the installment or the time and
23 conditions fixed for payment of it.

24 C. When a defendant sentenced to pay a fine in
25 installments or ordered to pay fees or costs defaults in

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1 payment, the court, upon motion of the prosecutor or upon its
2 own motion, may require the defendant to show cause why [~~his~~]
3 the defendant's default should not be treated as contumacious
4 and may issue a summons or a warrant of arrest for [~~his~~] the
5 defendant's appearance. It shall be a defense that the
6 defendant did not willfully refuse to obey the order of the
7 court or that [~~he~~] the defendant made a good faith effort to
8 obtain the funds required for the payment. If the defendant's
9 default was contumacious, the court may order [~~him~~] the
10 defendant committed until the fine or a specified part of it or
11 the fees or costs are paid. The maximum term of imprisonment
12 for such contumacious nonpayment shall be specified in the
13 order of commitment.

14 D. If it appears that a defendant's default in the
15 payment of a fine, fees or costs is not contumacious, the court
16 may allow the defendant additional time for payment [~~reduce the~~
17 ~~amount of the fine or of each installment, revoke the fine or~~
18 ~~the unpaid portion in whole or in part]~~ or require the
19 defendant to perform community service in lieu of the fine,
20 fees or costs."

21 Section 2. Section 31-20-6 NMSA 1978 (being Laws 1963,
22 Chapter 303, Section 29-18, as amended) is amended to read:

23 "31-20-6. CONDITIONS OF ORDER DEFERRING OR SUSPENDING
24 SENTENCE.--The magistrate, metropolitan or district court shall
25 attach to its order deferring or suspending sentence reasonable

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1 conditions as it may deem necessary to ensure that the
2 defendant will observe the laws of the United States and the
3 various states and the ordinances of any municipality. The
4 defendant upon conviction shall be required to reimburse a law
5 enforcement agency or local crime stopper program for the
6 amount of any reward paid by the agency or program for
7 information leading to ~~[his]~~ the defendant's arrest,
8 prosecution or conviction, but in no event shall reimbursement
9 to the crime stopper program preempt restitution to victims
10 pursuant to the provisions of Section 31-17-1 NMSA 1978. The
11 defendant upon conviction shall be required to pay the actual
12 costs of ~~[his]~~ the defendant's supervised probation service to
13 the adult probation and parole division of the corrections
14 department or appropriate responsible agency for deposit to the
15 corrections department intensive supervision fund not exceeding
16 one thousand eight hundred dollars (\$1,800) annually to be paid
17 in monthly installments of not less than twenty-five dollars
18 (\$25.00) and not more than one hundred fifty dollars (\$150), as
19 set by the appropriate district supervisor of the adult
20 probation and parole division, based upon the financial
21 circumstances of the defendant. The defendant's payment of the
22 supervised probation costs shall not be waived unless the court
23 holds an evidentiary hearing and finds that the defendant is
24 unable to pay the costs. If the court ~~[waives the defendant's~~
25 ~~payment of the supervised probation costs and the defendant's~~

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1 ~~financial circumstances subsequently change so that the~~
2 ~~defendant is able to pay the costs, the appropriate district~~
3 ~~supervisor of the adult probation and parole division shall~~
4 ~~advise the court and the court shall hold an evidentiary~~
5 ~~hearing to determine whether the waiver should be rescinded]~~
6 finds that the defendant is unable to pay the costs, the
7 defendant shall be required to perform community service and
8 shall receive credit toward the payment of probation costs at
9 the rate of the prevailing federal hourly minimum wage. The
10 labor shall be meaningful, shall not be suspended or deferred
11 and shall be of a type that benefits the public at large or a
12 public, charitable or educational entity or institution. A
13 person performing community service pursuant to court order
14 shall be immune from civil liability arising out of the
15 community service other than for gross negligence, shall not be
16 entitled to wages or considered an employee for any purpose and
17 shall not be entitled to workers' compensation, unemployment or
18 any other benefit. The court may also require the defendant
19 to:

20 A. provide for the support of persons for whose
21 support ~~[he]~~ the defendant is legally responsible;

22 B. undergo available medical or psychiatric
23 treatment and enter and remain in a specified institution when
24 required for that purpose;

25 C. be placed on probation under the supervision,

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1 guidance or direction of the adult probation and parole
2 division for a term not to exceed five years;

3 D. serve a period of time in [~~volunteer labor to be~~
4 ~~known as~~] community service [~~The type of labor and period of~~
5 ~~service shall be at the sole discretion of the court; provided~~
6 ~~that a person receiving community service shall be immune from~~
7 ~~any civil liability other than gross negligence arising out of~~
8 ~~the community service, and a person who performs community~~
9 ~~service pursuant to court order or a criminal diversion program~~
10 ~~shall not be entitled to wages, shall not be considered an~~
11 ~~employee and shall not be entitled to workers' compensation,~~
12 ~~unemployment benefits or any other benefits otherwise provided~~
13 ~~by law. As used in this subsection, "community service" means~~
14 ~~labor that benefits the public at large or a public, charitable~~
15 ~~or educational entity or institution];~~

16 E. make a contribution of not less than ten dollars
17 (\$10.00) and not more than one hundred dollars (\$100), to be
18 paid in monthly installments of not less than five dollars
19 (\$5.00), to a local crime stopper program or a local drug abuse
20 resistance education program that operates in the territorial
21 jurisdiction of the court; and

22 F. satisfy any other conditions reasonably related
23 to [~~his~~] the defendant's rehabilitation."

24 Section 3. Section 31-21-10 NMSA 1978 (being Laws 1980,
25 Chapter 28, Section 1, as amended) is amended to read:

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1 "31-21-10. PAROLE AUTHORITY AND PROCEDURE.--

2 A. An inmate of an institution who was sentenced to
3 life imprisonment as the result of the commission of a capital
4 felony, who was sentenced to life imprisonment as the result of
5 a conviction for a first degree felony resulting in the death
6 of a child, who was convicted of three violent felonies and
7 sentenced pursuant to Sections 31-18-23 and 31-18-24 NMSA 1978
8 or who was convicted of two violent sexual offenses and
9 sentenced pursuant to Subsection A of Section 31-18-25 NMSA
10 1978 and Section 31-18-26 NMSA 1978 becomes eligible for a
11 parole hearing after [~~he~~] the inmate has served thirty years of
12 [~~his~~] the inmate's sentence. Before ordering the parole of an
13 inmate sentenced to life imprisonment, the board shall:

14 (1) interview the inmate at the institution
15 where [~~he~~] the inmate is committed;

16 (2) consider all pertinent information
17 concerning the inmate, including:

18 (a) the circumstances of the offense;

19 (b) mitigating and aggravating
20 circumstances;

21 (c) whether a deadly weapon was used in
22 the commission of the offense;

23 (d) whether the inmate is a habitual
24 offender;

25 (e) the reports filed under Section

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1 31-21-9 NMSA 1978; and

2 (f) the reports of such physical and
3 mental examinations as have been made while in an institution;

4 (3) make a finding that a parole is in the
5 best interest of society and the inmate; and

6 (4) make a finding that the inmate is able and
7 willing to fulfill the obligations of a law-abiding citizen.

8 If parole is denied, the inmate sentenced to life
9 imprisonment shall again become entitled to a parole hearing at
10 two-year intervals. The board may, on its own motion, reopen
11 any case in which a hearing has already been granted and parole
12 denied.

13 B. Unless the board finds that it is in the best
14 interest of society and the parolee to reduce the period of
15 parole, a person who was convicted of a capital felony shall be
16 required to undergo a minimum period of parole of five years.
17 During the period of parole, the person shall be under the
18 guidance and supervision of the board.

19 C. Except for sex offenders as provided in Section
20 31-21-10.1 NMSA 1978, an inmate who was convicted of a first,
21 second or third degree felony and who has served the sentence
22 of imprisonment imposed by the court in an institution
23 designated by the corrections department shall be required to
24 undergo a two-year period of parole. An inmate who was
25 convicted of a fourth degree felony and who has served the

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1 sentence of imprisonment imposed by the court in an institution
2 designated by the corrections department shall be required to
3 undergo a one-year period of parole. During the period of
4 parole, the person shall be under the guidance and supervision
5 of the board.

6 D. Every person while on parole shall remain in the
7 legal custody of the institution from which [~~he~~] the person was
8 released, but shall be subject to the orders of the board. The
9 board shall furnish to each inmate as a prerequisite to [~~his~~]
10 the inmate's release under its supervision a written statement
11 of the conditions of parole that shall be accepted and agreed
12 to by the inmate as evidenced by [~~his~~] the inmate's signature
13 affixed to a duplicate copy to be retained in the files of the
14 board. The board shall also require as a prerequisite to
15 release the submission and approval of a parole plan. If an
16 inmate refuses to affix [~~his~~] the inmate's signature to the
17 written statement of the conditions of [~~his~~] the inmate's
18 parole or does not have an approved parole plan, [~~he~~] the
19 inmate shall not be released and shall remain in the custody of
20 the institution in which [~~he~~] the inmate has served [~~his~~] the
21 inmate's sentence, excepting parole, until such time as the
22 period of parole [~~he~~] the inmate was required to serve, less
23 meritorious deductions, if any, expires, at which time [~~he~~] the
24 inmate shall be released from that institution without parole,
25 or until such time that [~~he~~] the inmate evidences [~~his~~]

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1 acceptance and agreement to the conditions of parole as
2 required or receives approval for [~~his~~] the inmate's parole
3 plan or both. Time served from the date that an inmate refuses
4 to accept and agree to the conditions of parole or fails to
5 receive approval for [~~his~~] the inmate's parole plan shall
6 reduce the period, if any, to be served under parole at a later
7 date. If the district court has ordered that the inmate make
8 restitution to a victim as provided in Section 31-17-1 NMSA
9 1978, the board shall include restitution as a condition of
10 parole. The board shall also personally apprise the inmate of
11 the conditions of parole and [~~his~~] the inmate's duties relating
12 thereto.

13 E. When a person on parole has performed the
14 obligations of [~~his~~] the person's release for the period of
15 parole provided in this section, the board shall make a final
16 order of discharge and issue [~~him~~] the person a certificate of
17 discharge.

18 F. Pursuant to the provisions of Section 31-18-15
19 NMSA 1978, the board shall require the inmate as a condition of
20 parole:

21 (1) to pay the actual costs of [~~his~~] parole
22 services to the adult probation and parole division of the
23 corrections department for deposit to the corrections
24 department intensive supervision fund not exceeding one
25 thousand eight hundred dollars (\$1,800) annually to be paid in

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1 monthly installments of not less than twenty-five dollars
2 (\$25.00) and not more than one hundred fifty dollars (\$150), as
3 set by the appropriate district supervisor of the adult
4 probation and parole division, based upon the financial
5 circumstances of the defendant. The defendant's payment of the
6 supervised parole costs shall not be waived unless the board
7 holds an evidentiary hearing and finds that the defendant is
8 unable to pay the costs. ~~[If the board waives the defendant's~~
9 ~~payment of the supervised parole costs and the defendant's~~
10 ~~financial circumstances subsequently change so that the~~
11 ~~defendant is able to pay the costs, the appropriate district~~
12 ~~supervisor of the adult probation and parole division shall~~
13 ~~advise the board and the board shall hold an evidentiary~~
14 ~~hearing to determine whether the waiver should be rescinded].~~
15 If the board finds that the defendant is unable to pay the
16 costs, the defendant shall be required to perform community
17 service and shall receive credit toward the payment of parole
18 services at the rate of the prevailing federal hourly minimum
19 wage. The labor shall be meaningful, shall not be suspended or
20 deferred and shall be of a type that benefits the public at
21 large or a public, charitable or educational entity or
22 institution. A person performing community service pursuant to
23 this paragraph shall be immune from civil liability arising out
24 of the community service other than for gross negligence, shall
25 not be entitled to wages or considered an employee for any

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1 purpose and shall not be entitled to workers' compensation,
2 unemployment or any other benefit; and

3 (2) to reimburse a law enforcement agency or
4 local crime stopper program for the amount of any reward paid
5 by the agency or program for information leading to ~~his~~ the
6 inmate's arrest, prosecution or conviction.

7 G. The provisions of this section shall apply to
8 all inmates except geriatric, permanently incapacitated and
9 terminally ill inmates eligible for the medical and geriatric
10 parole program as provided by the Parole Board Act."

11 Section 4. EFFECTIVE DATE.--The effective date of the
12 provisions of this act is July 1, 2007.